

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
DUANE MIMS,

Plaintiff,

-against-

WARDEN ET AL.,

Defendants.  
-----X

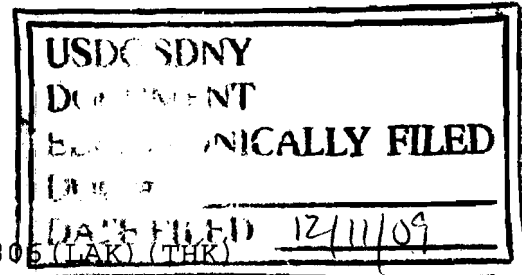
:  
: 09 Civ. 4806 (LAK) (THK)  
:

:  
: REPORT AND RECOMMENDATION  
: (PRO SE)  
:

TO: HON. LEWIS A. KAPLAN, UNITED STATES DISTRICT JUDGE.  
FROM: THEODORE H. KATZ, UNITED STATES MAGISTRATE JUDGE.

This action, brought under 42 U.S.C. § 1983, was referred to this Court for general pretrial supervision and Report and Recommendations on dispositive motions. Plaintiff, who proceeds *in forma pauperis*, filed his Complaint on May 22, 2009. On July 30, 2009, Plaintiff requested an extension of time to serve the Summons and Complaint, and, by Order dated August 13, 2009, the time was extended to October 1, 2009. In a letter dated August 18, 2009, the Court advised Plaintiff that service must be made on the Defendants by October 1, 2009, and that, absent a showing of good cause, failure to do so would result in the dismissal of the action. (See Docket Entry # 5.) As of this date, the docket sheet reflects that Plaintiff has not served Defendants with the Summons and Complaint.

Moreover, the Court has confirmed that the U.S. Marshal's Service attempted service of the Summons and Complaint on September 2, and September 9, 2009. The U.S. Marshal's Service, however, was unable to effect service on the Defendants because Plaintiff gave

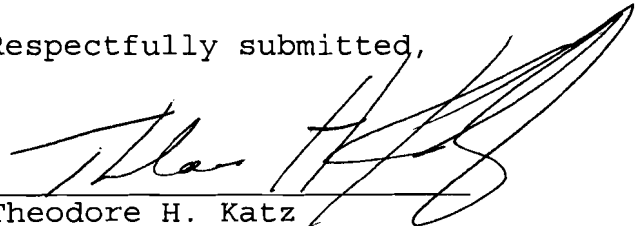


COPIES MAILED  
TO COUNSEL OF RECORD ON 12/11/09

insufficient identifying information with which to locate Defendants. Since the re-issuance of Summonses on September 23, 2009, Plaintiff has neglected to provide the U.S. Marshal's Service with the necessary forms with which to re-attempt service. Accordingly, this Court now recommends that the action be dismissed without prejudice. See Fed. R. Civ. P. 4(m).

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72 of the Federal Rules of Civil Procedure, Plaintiff shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6(a) and (e). Such objections shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of the Hon. Lewis A. Kaplan, U.S.D.J., and to the chambers of the undersigned, Room 1660. Any requests for an extension of time for filing objections must be directed to Judge Kaplan. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140, 155, 106 S. Ct. 466, 475 (1985); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Theodore H. Katz', is written over a horizontal line.

Theodore H. Katz  
United States Magistrate Judge

Dated: December 11, 2009  
New York, New York

Copies mailed this date:

Duane Mims  
241-08-11120  
Robert N. Davoren Complex  
11-11 Hazen Street  
East Elmhurst, New York 11370